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No. 88-153

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

TEXACO PETROLEUM COMPANY, ECUADORIAN GULF OIL COMPANY and GULF OIL CORPORATION (now, by change of name, CHEVRON U.S.A. INC.),

Petitioners,

—v.—

PHOENIX CANADA OIL COMPANY, LIMITED,

Respondent.

REPLY BRIEF FOR PETITIONERS

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1. Respondent's Brief in Opposition suggests that the validity of the Ecuadorian Supreme Court's interpretation of the pertinent Ecuadorian statutory language is somehow undermined because a non-judicial, lower-court-appointed "liquidator" once (*Garces* v. *Vallejo*) acted inconsistently with, and without reference to, the Supreme Court's interpreting opinion in *Segovia* v. *Acosta*. Not surprisingly, although this argument was made to the Court of Appeals, that court did not disregard the Supreme Court of Ecuador on any such frivolous basis. Its rejection was far more fundamental:

> "The [district] court also declined to follow a decision of the Supreme Court of Ecuador, *Segovia* v. *Acosta*, Judgment No. 341, Third Chamber, November 11, 1977, which presented a similar factual situation. The district court

observed correctly the lack of precedential effect of judicial decisions in civil law jurisdictions." (A24-25).[1]

2. In reality, decisions of the highest courts of civil law countries interpreting their statutes, while not technically binding, inescapably are persuasive and relied upon. The unavoidable nature of this phenomenon was described almost 40 years ago by Judge Jerome Frank in *Usatorre* v. *The Victoria*, 172 F.2d 434, 438-43 (2d Cir. 1949), and is abundantly demonstrated by the commentators referred to in the Motion for Leave to File and Brief of the Rule of Law Committee As *Amicus Curiae* in Support of the Petition for Certiorari at pages 9-14. As the Petition noted (p. 7 n.8), of course this is true of Ecuador as well.

Respectfully, the blanket rule of law adopted below, with which even Respondent is uncomfortable (as witness its attempt to predicate the result instead on the *Garces* v. *Vallejo* "liquidation" report), is based on an assumption that simply is contrary to reality.

3. Finally, even assuming an interpretation by Ecuador's Supreme Court of an Ecuadorian statute were, as Respondent implies, of absolutely no significance to lower Ecuadorian courts (where the matter might still be taken to Ecuador's Supreme Court), nevertheless, United States courts must not disregard it. The alternative—a United States court presuming to know better how to interpret an Ecuadorian statute than the highest court of Ecuador—is unacceptable, it is respectfully submitted, for the reasons set forth in the Petition and the *Amicus Curiae* brief.

4. In all events, the issue of the respect, if any, to be accorded the decisions of the highest courts of civil law coun-

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1 Respondent chides petitioners for not including in the Appendix the foregoing "liquidation" report and other materials relating to it, including numerous liquidation reports submitted to the Court of Appeals by respondents where, in contrast to *Garces* v. *Vallejo*, interest was not segmented. Needless to say, as the decision below was not based on these materials, there was no point in burdening the Court with them.

tries by federal courts, is of considerable and increasing significance, fully warranting this Court's attention.

Dated: October 7, 1988

Respectfully submitted,

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